

Submitted by George Sinas



A broad-based coalition to preserve the integrity of
Michigan's model No-Fault Insurance System

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AARP-Michigan
Brain Injury Association
of Michigan
Disability Advocates of
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UAW Michigan CAP

March 25, 2009

The attached document - "*The Kreiner Travesty*" - contains a summary of the 2004 *Kreiner v. Fischer* Michigan Supreme Court decision and what it has meant for Michigan's auto no-fault system and the hundreds of accident victims seriously injured by reckless and drunk drivers.

The Coalition Protecting Auto No-Fault – a diverse coalition of healthcare providers, labor, consumer and patient rights advocates and the disability community – offers this documentation to you as evidence in support of House Bill 4680.

House Bill 4680 offers a very narrow fix to the misguided *Kreiner* decision that has, at the very least, caused countless accident victims to be denied their right to pursue legitimate non-economic damages against the at-fault driver and, at its very worst, will lead to the complete unraveling of Michigan's auto no-fault system.

CPAN strongly supports House Bill 4680 and encourages swift action by the House Judiciary Committee and passage in the House.

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THE KREINER TRAVESTY

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THE ONGOING CRISIS

One of the greatest injustices in the history of Michigan No-Fault Law began on July 23, 2004 and it will continue until the Michigan Legislature intervenes. On that date, the Michigan Supreme Court released its 4-3 decision in the case of *Kreiner v Fischer*, 471 Mich 109 (2004). This controversial and much criticized decision has barred hundreds, if not thousands, of innocent auto accident victims from recovering damages for serious personal injuries. As a result, the reckless and drunk drivers who inflicted those injuries have escaped without accountability to the injured person. Moreover, insurance companies who insure the wrongdoers have been permitted to pocket millions of dollars of windfall profits that should have been paid to the victims. Oftentimes, the hardest hit are the elderly, people with handicaps and people whose jobs require physical labor.

The Kreiner decision denies injured people the right to seek damages unless the injuries sustained are so extensive and pervasive that the injury changes the "*course and trajectory*" of the injured person's life. Under such a draconian standard, many victims who suffer injuries serious enough to require inpatient hospitalization and major surgery and are also left with significant residual disabilities, are denied access to our legal system. Stated differently, the Kreiner decision tells drunk and reckless drivers who seriously injure others that neither they, nor their insurers, have any responsibility for the wrongfully inflicted damages because *the victim was not hurt bad enough*. In other words, under Kreiner, *it's a free pass!*

From the date the Kreiner decision was released until January 1, 2009, there have been approximately 230 unpublished Court of Appeals decisions implementing its severe limitations. *Of those 230 cases, the innocent victim lost approximately 186 times – a loss rate of about 81%!* Attached are summaries of a few of those appellate cases. What is particularly disconcerting is that every one of these victims represents scores of other victims who either abandoned their claim or lost it in a lower court ruling as a direct result of the Kreiner decision.

Clearly, this carnage will continue until the Michigan Legislature steps in and says "*Enough is enough,*" and takes a stand to protect Michigan's citizens from this travesty of justice.

KREINER BACKGROUND

The Law Before Kreiner

In 1973 — 36 years ago — the Michigan Automobile No-Fault Insurance Act went into effect. Under this statute, all accident victims, regardless of fault, receive comprehensive no-fault “PIP” benefits for certain *economic losses*. These benefits include lifetime medical expenses, three years of wage loss benefits, and three years of domestic service expenses. In exchange for these benefits, the Michigan no-fault law has always imposed an injury severity requirement that must be met in order for an accident victim to pursue a liability claim against the at-fault driver for recovery of *noneconomic loss* damages. This injury severity requirement is known as the “*tort threshold*.” For its entire 36 year history, the Michigan threshold has required that the victim suffer “*death, serious impairment of body function, or permanent serious disfigurement*.” Of these three thresholds, the one requiring “*serious impairment of body function*” has been the most important because it affects the most victims.

In 1995, for the first time in the history of no-fault, the Michigan Legislature defined “*serious impairment of body function*” with a one sentence definition which states; “*Serious impairment of body function means an objectively manifested impairment of an important body function that affects the injured person’s general ability to lead his or her normal life*” (1995 PA 222). According to the legislative history, the new definition was intended to ensure that “*the undeserving and frivolous cases will be weeded out*.” (See the House Legislative Analysis Section, Second Analysis, 12-18-95, page 2)

The new definition adopted by the Legislature was largely based upon an earlier Supreme Court decision in the case of *Cassidy v McGovern*, 415 Mich 483 (1982). The *Cassidy* definition was in effect from 1982 to 1987 when it was replaced by the Supreme Court’s decision in *DiFranco v Pickard*, 427 Mich 32 (1986). In the *Cassidy* case the Supreme Court held that the threshold of “*serious impairment of body function*” requires proof of (1) an *objectively manifested* injury (2) involving an *important body function* which (3) interferes with the injured person’s *general ability to live a normal life*. The *Cassidy* decision did not define the phrase “*objectively manifested*,” leaving that to further appellate interpretation. The following year, the Court of Appeals held that this phrase required proof of injuries that were “*subject to medical measurement*” [see *William v Payne*, 131 Mich App 403 (1984)]. The *Cassidy* decision also did not provide any definitional guidance regarding the phrase “*general ability to live a normal life*,” other than to say that it was an “*objective standard*” that focuses not on the

injured person's normal life, but rather on some objectively determined, hypothetical "normal life." In articulating these standards, however, the *Cassidy* decision clearly stated that the tort threshold does not require a permanent injury. The plaintiff in the *Cassidy* case suffered a fracture of both bones in his lower leg which required inpatient hospitalization, leg casting, and about seven months of disability. There was no indication in the Court decision that Mr. Cassidy underwent any type of surgery to repair his broken leg. His injury healed without any significant residual consequences. The *Cassidy* decision found that Mr. Cassidy's injuries constituted a serious impairment of body function *as a matter of law* under the newly defined standards.

The specific language adopted by the Legislature in 1995 PA 222 was actually less restrictive than the *Cassidy* decision in two respects: (1) it utilized a purely subjective normal life standard which focuses on the injured person's life, rather than some vague, undefinable "normal life;" and (2) it did not define the phrase "objectively manifested," thereby leaving intact a subsequent re-definition of that phrase that appeared in *DiFranco v Pickard, supra*, wherein the Court held that "objectively manifested" means a "medically identifiable injury" with evidence "establishing that there is a physical basis for subjective complaints of pain and suffering."

Under the *Cassidy* decision, victims who sustained injuries involving fractures or necessitating surgery typically had qualifying threshold injuries. When 1995 PA 222 went into effect, it was widely believed that accident victims would not be required to show injuries that were more severe than had been required under the *Cassidy* decision. That in fact was the situation from the time the new statute was enacted until July 2004, when the Michigan Supreme Court stunned the legal world with its opinion in *Kreiner v Fischer*, 471 Mich 109 (2004).

The Kreiner Decision

The *Kreiner* decision was a vigorously contested 4-3 ruling which focused on that specific definitional element of serious impairment of body function which requires an injury that "*affects the person's general ability to lead to his or her normal life.*" The Court stated this definitional element means that an injured victim must prove: (1) that the "*course or trajectory*" of the victim's life was altered; and (2) that the victim was, "*for the most part,*" generally unable to lead his or her normal life. The Court further noted that qualifying injuries were those which are "*pervasive and extensive.*" The *Kreiner* decision reached these conclusions in spite of the fact that *none of these requirements are contained in the statutory language enacted in*

1995 PA 222, nor were they referenced, in any way, in the legislative history leading up to the passage of that Act. In that regard, the dissenting opinion in *Kreiner* claimed the majority was engaging in judicial activism that amounted to “*rewriting this unambiguous statute to comport with [its] own preference in how the statute should be written and applied.*” As soon as the *Kreiner* decision was released, legal experts immediately predicted it would drastically alter the definition of serious impairment of body function and require injuries substantially more severe than those envisioned by the Legislature when it enacted 1995 PA 222. *Those predictions were absolutely correct.*

The Future

Unless the *Kreiner* problem is “fixed” by the Legislature, innocent accident victims will continue to be denied the right to pursue legitimate noneconomic loss claims against the at-fault and drunk drivers whose irresponsibility causes countless highway tragedies.

In addition, many experts now widely believe that because of the *Kreiner* problem, the entire Michigan auto no-fault system has become dangerously destabilized. It is feared this instability could precipitate political action that will eventually result in the abolition of the Michigan auto no-fault law and the security it provides to all of Michigan’s residents.

That would be a terrible price to pay because of a single court decision that went way beyond what the Michigan Legislature ever intended!

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Gagne v Schulte

Michigan Court of Appeals
Docket Number 264788; February 28, 2006
Judges Smolenski and Talbot, O'Connell dissenting

Injury:

The victim in this case was a 21-year-old woman who was employed as a housekeeper. She was seriously injured when a drunk driver hit her vehicle head on. The victim sustained major damage to her knee consisting of a torn anterior cruciate ligament (ACL) and a large "bucket handle" tear of the medial meniscus. She also suffered a brain concussion and loss of consciousness. The victim's knee injuries required major reconstructive arthroscopic surgery consisting of removal of the torn portion of her meniscus cartilage and removal of her damaged ACL. The ACL was then replaced with a donated tissue graft that was implanted in the victim's knee by drilling tunnels through her thigh and shin bones into which metal screws were inserted to secure the graft. The victim's surgeon described the operation as a "very big surgery." The first few weeks after the accident, the victim could barely move about with crutches and required help with tasks such as getting to the bathroom and bathtub. After surgery, she developed serious atrophy of her upper leg muscles and knee joint instability necessitating seven months of physical therapy and rehabilitation and was restricted from bending, twisting, stooping or otherwise exerting her reconstructed knee. More than 17 months after the accident, the victim's physician continued to restrict her from work. She eventually lost her job as a housekeeper because her knee prevented her from performing her work. She was also unable to engage in a number of pre-accident activities she once enjoyed such as ice skating, roller blading, gymnastics, and dancing. Moreover, it was determined that the knee-joint instability was likely to be permanent and that she was at increased risk of developing osteoarthritis in the future. The Court of Appeals affirmed the trial court's decision that the victim's injury did not constitute a serious impairment of body function.

Victim Info:

The lawsuit was filed in Oakland County. The victim's attorney was Lawrence D. Kohl, Farmington Hills, telephone number 248-474-9350.

Yovan v Bacarova

Michigan Court of Appeals
Docket Number 258976; May 4, 2006
Judges Saad and Bandstra, Neff dissenting

Injury:

The victim in this case was a 76-year-old grandmother. She sustained six broken ribs, a collapsed lung and suffered from pleural effusion (fluid in the lungs). These injuries required a five-day hospitalization. Upon discharge, the victim was bed-ridden for ten days. X-rays taken more than a year after the accident showed six partially healed ribs, which the doctor stated meant that no further healing or improvement was likely and that there was no further medical treatment that would improve the victim's status. As a result of her injuries, the victim suffers from chronic rib and muscle pain, a partial dislocation of the ribs at the spine and inflammation of the muscles between the ribs due to tearing and scarring. Because of the residual rib injuries, the victim is unable to wear a bra or lift more than 10 to 12 pounds due to the added pressure on her ribs. Before the accident, the victim led a healthy and active life. However, after the accident, she was no longer able to participate in a number of activities in which she previously engaged, such as daily walks, caring for her grandchildren, cooking, cleaning, gardening and traveling. Moreover, the victim's pain will likely worsen as her rib joints further deteriorate from osteoarthritis caused by her injuries. Due to the nature of her injuries, the victim's doctor prescribed chronic pain management and suggested that she change her lifestyle. The Court of Appeals affirmed the trial court's decision that the victim's injuries did not constitute a serious impairment of body function.

Victim Info:

This lawsuit was filed in Oakland County. The victim's attorney was Jeffrey H. Goldman, Troy, telephone number 248-362-0070.

Madkins v Lynem, et al

Michigan Court of Appeals
Docket Number 258533; April 11, 2006
Judges Hoekstra, Wilder and Zahra
Leave to appeal denied, Mich. Sup. Ct. #131246

Injury:

The victim in this case was an adult female. She suffered a fractured ankle which required surgery. After surgery, the victim used crutches to ambulate for about three months and received physical therapy twice a week for two months. After treatment ended, the victim's ankle continued to swell and her range of motion was impaired. As a result of her injuries she walked with a limp, had a reduced ability to ambulate and was unable to stand for an extended period of time. These impairments rendered the victim unable to perform certain jobs, and caused her to quit a warehouse job after two days because of ankle swelling. The impairments have also affected her ability to participate in certain pre-accident recreational activities, such as playing basketball (which she played frequently) and roller skating. The Court of Appeals affirmed the trial court's decision that the victim's injury did not constitute a serious impairment of body function.

Victim Info:

This lawsuit was filed in Wayne County. The victim's attorney was Brian A. Kutinsky, Southfield, telephone number 248-353-5595.

Jones v Wheelock

Michigan Court of Appeals
Docket Number 258974; April 25, 2006
Judges Saad and Bandstra, Neff dissenting
Leave to appeal denied, Mich. Sup. Ct. #131363

Injury:

The victim in this case was a female high school student. She suffered complete tears of the anterior cruciate ligament (ACL) and the medial collateral ligament (MCL) in her right knee. Six weeks after the accident, the victim underwent reconstructive surgery, which included the insertion of a permanent screw into her knee joint. She then underwent three months of physical therapy. The victim, a sophomore in high school, was incapacitated as a result of her injury for nearly five months. During this five-month period, she had to forgo many high school activities including working at her part-time job, performing in the marching band, participating with her robotics team, playing basketball and trying out for cheerleading. After treatment ended, the victim continued to experience pain and swelling when she walked or stood for more than three hours. This impacted her ability to engage in her normal activities such as jogging and shopping and kept her from participating in high school as a normal teenager. Furthermore, in order for her to engage in physical activity in the future, such as playing in the marching band, she would need to wear a brace. The Court of Appeals affirmed the trial court's decision that the victim's injury did not constitute a serious impairment of body function.

Victim Info:

This lawsuit was filed in Oakland County. The victim's attorney was Mark Granzotto, Royal Oak, telephone number 248-546-4649.

Elliott v Barckholtz

Michigan Court of Appeals
Docket Number 259255; May 16, 2006
Judges Fitzgerald and Talbot, White dissenting

Injury:

The victim in this case was a male professional pianist. He sustained fractures of his heel and other injuries to his left foot which resulted in impaired ambulation and chronic pain. According to his physician, the victim had extensive permanent restrictions, including no standing or walking for more than 10 minutes with a 30 minute rest period; no walking on uneven surfaces; no ladder climbing; no operating foot controls with his left foot; and a 10-pound weight restriction. The victim's injuries will require ongoing medical treatment and cause chronic, life-long pain. The Court of Appeals affirmed the trial court's decision that the victim's injury did not constitute a serious impairment of body function.

Victim Info:

This lawsuit was filed in Saginaw County. The victim's attorney was Joseph S. Harrison, Saginaw, telephone number 989-799-7609.

Wohlscheid v Raymer

Michigan Court of Appeals
Docket Number 260033; May 2, 2006
Judges White, Fitzgerald and Talbot

Injury:

The victim in this case was a 63-year-old male. He sustained back and shoulder injuries that required arthroscopic shoulder surgery, the use of a shoulder immobilizer, and physical therapy. After several periods of work loss totaling nine months, the victim was terminated from his job. After he was released from medical treatment, he continued to have back pain which impaired his ability to perform certain household chores, such as shoveling. The pain also impaired his ability to engage in pre-accident recreational activities and hobbies, such as roller blading, dancing and exhibiting at craft shows. The Court of Appeals affirmed the trial court's decision that the victim's injury did not constitute a serious impairment of body function.

Victim Info:

This lawsuit was filed in Ingham County. The victim's attorney was Seymour Cherny, Livonia, telephone number 734-266-9100.

Cates v Melhado

Michigan Court of Appeals

Docket Number 264557; October 3, 2006

Judges Borrello and Jansen, Cooper dissenting

Injury:

The victim in this case was a grandmother. She sustained a herniated lumbar disc at the level of the 4th lumbar spinal vertebra as well as degenerative disc disease. The victim required physical therapy and uses a TENS unit for pain management. The victim is in near constant pain, which causes her to periodically miss work and requires the use of a chair at work. The pain has limited her ability to engage in many of her pre-accident activities, such as bowling, dancing and playing with her two-year-old grandchild. In addition, she is now unable to travel without a wheelchair. Moreover, sexual intimacy with her husband is now precluded by her injury. The Court of Appeals affirmed the trial court's decision that the victim's injuries did not constitute a serious impairment of body function.

Victim Info:

This lawsuit was filed in Wayne County. The victim's attorney was Gary A. Colbert, Farmington Hills, telephone number 248-539-8099.

May v Zalucha

Michigan Court of Appeals
Docket Number 266733; March 16, 2006
Judges Smolenski, Whitbeck and O'Connell

Injury:

The victim in this case was a female who was approximately 30 years old at the time of the accident. She sustained a herniated cervical spinal disc and injuries to her right shoulder described as internal derangement with secondary trigger points on the medial border of the right scapula. Her shoulder injury required arthroscopic surgery, immobilization, pain medication and four months of physical therapy. The victim was off work nearly seven months due to her injuries. After treatment ended, the victim was unable to perform various domestic and recreational activities without pain. The Court of Appeals affirmed the trial court's decision that the victim's injury did not constitute a serious impairment of body function.

Victim Info:

This lawsuit was filed in Saginaw County. The victim's attorney was Michael L. Battersby, Farmington Hills, telephone number 248-865-0866.

Guevara v Martinez

Michigan Court of Appeals
Docket Number 260387; May 24, 2005
Judges Bandstra, Fitzgerald and Meter

Injury:

The victim in this case was an adult male formerly employed as a cook. He sustained a dislocated right shoulder and a torn anterior rotator cuff. An orthopedic surgeon placed the victim in a shoulder immobilizer and, six weeks later, performed surgery to repair the rotator cuff tear and remove a bone fragment. The victim also underwent a course of physical therapy from which he was released five months after the accident. Due to his injuries, the victim was unable to use his dominant right arm and was unable to perform activities related to his personal care for two months. After treatment ended, the victim continued to experience shoulder pain and was unable to lift weights or throw a ball well. The Court of Appeals affirmed the trial court's decision that the victim's injuries did not constitute a serious impairment of body function.

Victim Info:

This lawsuit was filed in Muskegon County. The victim's attorney was Scott B. Hansberry, Grand Rapids, telephone number 616-785-3300.

Cook v Hardy

Michigan Court of Appeals
Docket Number 250727; February 24, 2005
Judges Zahra, Neff and Cooper
Michigan Supreme Court
474 Mich 1010 (2006)

Injury:

The victim in this case was a female college student. She sustained multiple acute fractures of both bones in her lower leg – the mid-shaft of her right tibia and an acute displaced fracture of her right fibula. The impact of the accident was so great that it bent a titanium rod that had been permanently inserted into the victim's right tibia for an earlier injury from which she had completely recovered. The victim, a very active student, spent six to eight weeks in a hard cast and was on crutches. Due to her injury, she was not able to participate in an independent study program and was disabled from work. She was also forced to cancel a planned vacation. After the cast was removed she was unable to fully resume her daily pre-accident activities that required her to lift and carry lights and film equipment for her studies. In addition, she was precluded from participating in her pre-accident recreational activities, such as skate boarding. The Michigan Supreme Court reinstated the trial court's decision that the victim's injury did not constitute a serious impairment of body function.

Victim Info:

This case was filed in Ingham County. The victim's attorney was Michael A. Ross, Troy, telephone number 248-362-3707.

Karachy v Buuly

Michigan Court of Appeals
Docket Number 261332; June 21, 2005
Judges O'Connell, Schuette and Borrello

Injury:

The victim in this case was a male construction worker. He suffered an avulsion fracture to his right tibia (shin bone) and a dislocated shoulder. The victim underwent arthroscopic surgery on his leg. For approximately six weeks, his leg was in a cast and his shoulder was immobilized with a sling. He was also wheelchair bound for nearly two months. After his cast was removed he was on crutches and used a cane thereafter. The victim underwent three months of physical therapy and was off work for 14 weeks, after which he changed occupations. The victim's knee continued to buckle and "crack" during everyday activities and the impingement has left him unable to participate in certain pre-accident recreational activities, such as running, playing soccer and diving. The Court of Appeals affirmed the trial court's decision that the victim's injuries did not constitute a serious impairment of body function.

Victim Info:

This lawsuit was filed in Muskegon County. The victim's attorney was Adrian A. Reed, Grand Rapids, telephone phone number 616-785-3300.

Salem v Trojanek

Michigan Court of Appeals
Docket Number 252702; August 25, 2005
Judges Zahra, Gage and Murray

Injury:

The victim in this case was an adult male. He sustained a fracture of the inferior left patella (knee cap). The victim was placed on full work restriction, prescribed pain medication and referred to an orthopedic specialist who prescribed physical therapy. The victim completed physical therapy after four months. After his treatment ended, the victim had continuous pain, limited use of his left knee, restricted ability to ambulate, and was not able to fully engage in all pre-accident activities, including recreational activities. The Court of Appeals affirmed the trial court's decision that the victim's injury did not constitute a serious impairment of body function.

Victim Info:

This lawsuit was filed in Kent County. The victim's attorney was James T. Heos, Lansing, telephone number 517-372-1011.

Utle v Brown

Michigan Court of Appeals
Docket Number 270133; October 24, 2006
Judges Cavanagh, Bandstra and Owens

Injury:

The victim in this case was a male employed as a machine press operator. He sustained back and neck injuries for which he underwent surgery on his cervical spine followed by two months of physical therapy. The injury resulted in six months work loss. In addition, he required help with household chores for three months and help with certain activities of daily living, such as putting on his shirt, for eight months. Although the victim returned to work as a machine press operator, he was required to sit while operating the press. Moreover, the victim was no longer able to participate in certain pre-accident recreational activities and the frequency of his sexual intimacy has decreased. The Court of Appeals affirmed the trial court's decision that the victim's injuries did not constitute a serious impairment of body function.

Victim Info:

This lawsuit was filed in Oakland County. The victim's attorney was Robert J. Mazzara, Eastpointe, telephone number 586-649-8522.

Basner v Werth

Michigan Court of Appeals
Docket Number 267236; June 27, 2006
Judges Kelly, Markey and Meter

Injury:

The victim in this case was a 29-year-old male. He sustained an avulsion fracture of the C2 spinal vertebra; a herniated cervical disc at the C5 and C6 level; a lumbar sprain; chest contusion; and an eye injury. As a consequence of these injuries the victim returned to work with physician imposed lifting restrictions. He continued to experience pain with his normal life activities. The Court of Appeals affirmed the trial court's decision that the victim's injury did not constitute a serious impairment of body function.

Victim Info:

This lawsuit was filed in Genesee County. The victim's attorney was James W. Perry, Clare, telephone number 989-386-3456.

Stewart v Lietzke

Michigan Court of Appeals
Docket Number 268302; August 3, 2006
Judges Sawyer and Schuette, Davis dissenting

Injury:

The victim in this case was a female horseback riding instructor. She sustained injuries to her neck and back and numbness in her left arm which resulted in radiculopathy (a pinched nerve with radiating pain), cervicalgia (neck and shoulder pain) and facet syndrome (irritation of one or more joints of the back and neck). Her ongoing treatment, which she can expect to require for the rest of her life, consists of regular multiple epidural steroidal injections into the cervical spine. Her treatment has also involved a number of rhizotomy procedures, where the spinal nerve roots are burned in an effort to deaden the pain. It appears that she will continue to require more of these surgical procedures. The victim has also been treated with pain medication, muscle relaxants and physical therapy. The victim was an avid horse-woman from childhood and a professional riding instructor who continues to work on a horse farm and give riding lessons. However, she now must instruct her students from the ground, limit her riding time, and is only able to ride certain horses. Moreover, she requires help with the farm chores and heavy lifting as well as with her regular household duties and must adapt the way she performs her chores so as not to trigger neck pain. Furthermore, the victim is unable to engage in other pre-accident recreational activities such as mountain biking and swimming. The Court of Appeals affirmed the trial court's decision that the victim's injuries did not constitute a serious impairment of body function.

Victim Info:

This case was filed in Eaton County. The victim's attorney was Ronald L. Marienfeld II, Jackson, telephone number 517-788-6290.

Behnke v Auto Owners Insurance Company

Michigan Court of Appeals
Docket Number 248107; September 16, 2004
Judges Whitbeck, Griffin and Borrello
474 Mich 1004 (2006)

Injury:

The victim in this case was a 44-year-old man who was employed as a welder. He sustained a severe hyperextension hyperflexion injury to his cervical spine. A day after the collision the victim was hardly able to move his neck and had an intense headache with nausea. X-rays revealed straightening of the normal cervical lordosis. They also showed that his fourth and fifth cervical vertebrae were "blocked" and that his fifth and sixth cervical vertebrae were closer together than they should have been. A neurosurgeon noted spondylitic facet degeneration in the cervical spine. The victim remained under the care of his personal physician who consistently noted muscle spasms in the neck with range-of-motion limitations and predicted that the victim's condition was permanent and that he would suffer increasing arthritis and neck pain for the rest of his life. A neurologist treated the victim with occipital nerve block injections and recommended that he discontinue his 25-year career as a welder because of its affect on his neck condition. In addition, the victim was treated with prescription pain medications including Relafan, Arthrotec, Vioxx, Vicodin, Ultracet and Darvocet. The victim continued to suffer intense daily headaches which he rated 10 on a 10 point scale, increased neck pain, and he was unable to turn his head. Due to his chronic neck pain, the victim's ability to engage in sexual relations with his wife was dramatically affected. Intercourse would trigger severe muscle spasms that would be so painful the victim would nearly lose consciousness. In addition, his ability to engage in pre-accident recreational activities such as dancing, gardening, landscaping, hiking, hunting, snowmobiling and scuba diving was significantly impaired. The Michigan Supreme Court reinstated the trial court's decision that the victim's injury did not constitute a serious impairment of body function.

Victim Info:

This lawsuit was filed in Chippewa County. The victim's attorney was Gary A. Kozma, Gaylord, telephone number 989-732-2491.

McCormick v General Motors

Michigan Court of Appeals
Docket Number 275888; March 25, 2008
Judges Whitbeck, Jansen and Davis

Injury:

The plaintiff in this case was a worker who sustained injury in Genesee County. He suffered a severe fracture of his left ankle joint as a result of a truck backing up over his leg. He underwent two surgeries and was off work for one year. The seriousness of his injury was acknowledged by the Court of Appeals majority opinion which noted, *"the broken left ankle was a serious injury that impacted an important body function—namely, the ability to stand and walk. . . . We acknowledge that plaintiff's injury was serious enough to require two operations and that plaintiff continues to suffer from some degree of ankle pain. We also acknowledge that painful injuries, such as that sustained by plaintiff in the present case, do not generally disappear over time or necessarily improve with age. . . ."* Similarly, the dissenting opinion confirmed the functional significance of plaintiff's injury by noting that although plaintiff eventually returned to work, *"he is 'at another duty' because his employer evaluated plaintiff's physical condition and, on that basis, did not consider him capable of performing his prior duties."* Moreover, the dissenting opinion noted that the injury had produced significant residual consequences in the form of degenerative arthritis. In this regard, the dissenting opinion stated, *"Plaintiff's doctor and an independent doctor both found some indication of degenerative joint disease in his ankle."*

Victim Info:

The lawsuit was filed in Genesee County. The victim's attorney was David M. Kramer, Birmingham, telephone number 248-642-8350.

Ester v Gatie

Michigan Court of Appeals
Docket Number 276578; April 10, 2008
Judges Meter, Sawyer and Wilder

Injury:

The victim in this case was a physically active young man who engaged in a wide variety of athletic and recreational activities prior to his injury. He sustained a fracture of three bones in his foot, two of which required surgery to repair. The Court acknowledged that the plaintiff's injury resulted in a "*foot deformity*" and that plaintiff walks with an "*abnormal gait.*" Moreover, in a sworn statement, plaintiff's physician predicted that "*plaintiff's gait problems would become more pronounced over time.*" Moreover, the Court decision acknowledged that plaintiff's injury had affected his ability to walk and stated in that regard that the plaintiff, "*walks more slowly than he did before the accident.*" As a result of his injuries, the plaintiff could no longer engage in certain recreational activities such as rollerblading and hockey. He was also unable to play golf without using a golf cart. In spite of the nature and extent of plaintiff's injuries and their affect on his normal life, the Court of Appeals held that under the *Kreiner* standard, plaintiff's injury "*does not indicate that the impairment affected the broad course of plaintiff's entire life.*"

Victim Info:

The lawsuit was filed in Macomb County. The victim's attorney was Paul J. Millenbach, Farmington Hills, telephone number 248-539-9900.

Cynthia Jones v Jones

Michigan Court of Appeals
Docket Number 274627; November 15, 2007
Judges Zahra, White and O'Connell

Injury:

The victim in this case sustained serious injuries to her leg when she was struck by a car while crossing the street. Her injuries consisted of a fracture of her left leg that required surgery and the implantation of metal screws and hardware to repair the fracture (*commonly referred to as open reduction, internal fixation surgery*). As a result of her injury and the requisite surgery, the plaintiff was confined to a wheelchair for several months, during which time she also required in-home care to assist her in performing activities of daily living. The victim testified that her ability to walk has been affected in that she limps and cannot walk as long as she could prior to her injury and that her injury affected her ability to do household chores. The Court ruled that plaintiff's injuries did not satisfy the *Kreiner* threshold and stated, "*. . . plaintiff's life after the injury is not so different that her general ability to lead her normal life has been affected.*"

Victim Info:

The lawsuit was filed in Wayne County. The victim's attorney was Paul R. Swanson, Detroit, telephone number 313-963-1234.

Adams v Hodge

Michigan Court of Appeals
Docket Number 279023; August 26, 2008
Judges Cavanagh, Jansen and Kelly

Injury:

The victim in this case was employed as a wardrobe attendant in a Detroit business establishment until suffering injury in a two-car collision. The accident caused her to suffer a fractured wrist that required surgery resulting in the permanent placement of a steel plate and six pins in her wrist. Following her surgery, plaintiff wore a wrist brace due to swelling and pain, required at least 36 physical therapy sessions, and was on medical disability for approximately three months. Subsequently, she complained of pain while performing her job and reported difficulties in bathing, cooking, housework, and driving. Moreover, plaintiff testified that she could no longer operate a vacuum cleaner and was required to switch to wearing shoes without laces. The Court concluded that plaintiff's injury did not satisfy the *Kreiner* criteria and held, "*We conclude that the impediments of which plaintiff complains bring to light inconveniences, but not a change in the trajectory of her life.*"

Victim Info:

The lawsuit was filed in Wayne County. The victim's attorney was Richard E. Shaw, Detroit, telephone number 313-963-1301.

Douglas Jones v Olson

Michigan Court of Appeals
Docket Number 268929; September 21, 2006
Judges Borrello, Jansen and Cooper

Injury:

The victim in this case was a construction worker who did heavy work, including pouring foundation walls. He was injured in an automobile accident that caused him to suffer a fractured neck, medically described as a fracture of the 7th cervical vertebra. In addition, he sustained bulging spinal discs at the 5th, 6th, and 7th cervical vertebra levels. He was off work for approximately six months. During his disability, he had persistent pain in his neck with radiation and numbness into his shoulders and arms and decreased neck rotation. He wore a cervical collar, underwent physical therapy, and was prescribed medications. During his six month disability, he was also not able to engage in numerous recreational activities, including hunting, snowmobiling, yard work, playing softball, and talking walks. He was unable to drive for two months during which time he had difficulty dressing and feeding himself and with matters dealing with intimacy. The Court of Appeals ruled that plaintiff's fractured neck and six month disability satisfied the *Kreiner* threshold. However, the Michigan Supreme Court reversed in a 4-3 decision rendered on April 25, 2008. The Supreme Court's decision drew a vigorous dissent from Justice Betty Weaver who highlighted the widespread injustice resulting from the *Kreiner* decision. In this regard, Justice Weaver wrote:

"By importing the concept of permanency of injury into MCL 500.3135 – a concept that is nowhere referenced in the text of the statute – the majority of four (Chief Justice Taylor, and Justices Corrigan, Young, and Markman), in Kreiner v Fischer, 471 Mich 109 (2004), actively and judicially legislated a permanency and temporal requirement to recover noneconomic damages in automobile accident cases. The Kreiner interpretation of MCL 500.3135 is an unrestrained misuse and abuse of the power of interpretation masquerading as an exercise in following the Legislature's intent. . . .

For all intents and purposes, the Kreiner majority held that unless a person 'for the most part' can no longer live his or her life, he or she cannot recover noneconomic damages under MCL 500.3135. The only way a person can no longer 'for the most part' live his or her life is if the 'overall or broad ability' to 'conduct the course of his life' is affected. While paying lip service to the contrary, the Kreiner majority faction in essence held that a plaintiff cannot recover noneconomic damages for serious impairment of bodily function unless the impairment affects his or her life ad infinitum. . . . By importing the concept of permanency of injury into MCL 500.3135 – a concept that is nowhere referenced in the statute – the Kreiner majority actively and judicially legislated an additional requirement for obtaining noneconomic damages in automobile accident cases."

Victim Info:

The lawsuit was filed in Wexford County. The victim's attorney was Jeffrey S. Jones, Clare, telephone number 989-386-3456.

